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JAMES H. McKENNEY,
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United States Supreme Court.

STATE OF SOUTH DAKOTA

against

STATE OF NORTH CAROLINA.

Original. No. 8.

The defendant now moves for an order extending the time during which it shall have the right to pay the sum decreed to be due upon the bonds herein sued on, and that such time be fixed for the first Monday in April instead of being fixed for the first Monday in January, 1905, as it now is.

The effect of such enlargement of the time would be to make it so much longer before the complainant could advertise the property for sale under the decree.

The complainant objects to this for the reason that it is contrary to the practice established by the Court of Chancery in England, and by this Court.

Originally, when the foreclosure of mortgages was only by what is known as a strict foreclosure, and when the lapse of the day before which redemption might be made absolutely passed the

title to the real estate mortgaged, there was a strong tendency upon the part of Courts to give ample time to the mortgagor to pay the amount due on his mortgage and so redeem the land. Subsequently, when the practice grew up of directing a sale instead of a strict foreclosure, the form of the decree continued to direct the payment of the sum adjudged to be due by a certain day, or in default thereof, that a sale take place. While, as against strict foreclosure a somewhat liberal extension was allowed, the contrary is the rule, and perhaps it may be even stated that the rule is absolute that no extension of time will be given where the decree awards a sale. The doctrine of this Court in the respect mentioned is well settled, and will be found adjudged in the cases of Clark vs. Reyburn, 75 United States, 318, and also in the case of Chicago and Vincennes Railroad Co. vs. Fosdick, 106 U. S., 70, and cases cited. The practice is stated in considerable detail and fully in the case of Perine vs. Dunn, 4 Johnson Ch., 140; also in note to that case.

Chancellor Kent says, in the opinion in that case, "that it may be proper to observe that though six months subject to enlargement are allowed to redeem on a bill to foreclose, yet the rule and the practice apply only to cases of strict foreclosure where by the decree the equity of redemption is barred and a complete title is vested in the mortgagee. The rule does not apply to cases of decrees for the sale of mortgaged premises according to our usual practice."

The circumstances referred to by the defendant that the legislature of North Carolina is not now in session are wholly irrelevant. This decree was

rendered on the first of February last. I understand—and the gentleman on the other side will correct me if I am in error—that the legislature of the State of North Carolina was then in session, and they could have considered this matter then had they been so disposed.

If the time for the payment of the money is postponed or enlarged, inasmuch as the decree fixes the amount due, and gives no interest, the date of payment is postponed absolutely at the cost of the complainant, unless it should be provided as a condition that the defendant should pay all interest and costs.

The session of the legislature of North Carolina for this year, I understand, is to commence in January. By the terms of the decree we are compelled to give six weeks' notice of the time and place of sale. Long before the time for sale will have arrived, the legislature will have had time to act in whatsoever way it thinks best.

Further, even under strictest rules for the strict foreclosure, the time to pay was never extended except upon equitable terms. If the defendant's financial representatives should advise us of an earnest desire on their part to pay the sum decreed, and should ask for time in order to effect any particular action by the legislature, they would have no need to come to this court to ask for time. It would be a pleasure on the part of the complainant to grant whatever time was necessary for such purpose; but I have yet to hear of any tendency or desire upon the part of the defendant to pay the sum in the decree adjudged to be due, and the State of South Dakota therefore submits to this Court that

it would be unfair and inequitable to enlarge the time provided in the decree for the payment of the money even if under the settled practice in regard to foreclosures where a sale is adjudged, the Court had power to do it, especially when the defendant at any time before sale can pay the amount due and so stop the sale.

WHEELER H. PECKHAM,
R. W. STEWART,
Of Counsel for Complainant.

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